



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

MARLON I. BROWN, DPA  
DIRECTOR

Wells Fargo Rail Company,  
Petitioner,  
v

MICHIGAN TAX TRIBUNAL  
MTT Docket No. 23-002257

Michigan Department of Treasury  
and  
State Tax Commission,  
Respondents.

Presiding Judge  
Joshua M. Wease

ORDER DENYING RESPONDENTS' MOTION FOR SUMMARY DISPOSITION  
UNDER MCR 2.116(C)(8)

ORDER DENYING RESPONDENTS' MOTION FOR SUMMARY DISPOSITION  
UNDER MCR 2.116(C)(10)

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION UNDER  
MCR 2.116(C)(10)

FINAL OPINION AND JUDGMENT

**INTRODUCTION**

The issue in this case is whether Petitioner is entitled to a tax credit under the Public Utility Tax Act Public (PUTA)<sup>1</sup> for tax year 2021 where Petitioner submitted its forms via U.S. Mail rather than using the State Tax Commission's (STC) online filing system.

On November 8, 2021, the Michigan Court of Claims granted Respondents' motion for summary disposition under MCR 2.116(C)(4) based on a lack of subject matter jurisdiction and therefore did not address any other issues argued by the parties.

On December 1, 2022, the Michigan Court of Appeals upheld the Court of Claims' decision stating, "We exercise our powers in equity to remand to the Michigan Tax Tribunal for further proceedings consistent with this opinion."

On September 7, 2023, Respondents filed their Motion for Summary Disposition in Lieu of Answer under MCR 2.116(C)(8) and MCR 2.116(C)(10). Respondents contend that Petitioner is not entitled to a 2021 maintenance credit because it failed to

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<sup>1</sup> MCL 207.1 et seq.

apply for the credit by filing its 2021 Annual Property Report (APR) and credit application using STC's online electronic system.<sup>2</sup>

On October 12, 2023, Petitioner filed its Response in Opposition to Respondents' Motion for Summary Disposition and a Cross Motion for Summary Disposition under MCR 2.116(C)(10).

### **RESPONDENTS' MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(8)**

Respondents contend that Petitioner failed to state a claim on which relief can be granted. Motions under MCR 2.116(C)(8) are appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." Dismissal should be granted when the claim, based solely on the pleadings, is so clearly unenforceable that no factual development could possibly justify a right to recovery.<sup>3</sup> In reviewing a motion under this subsection, the court must accept as true all factual allegations in support of a claim, as well as all inferences which can fairly be drawn from the facts.<sup>4</sup>

### **RESPONDENTS' MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)**

Respondents argue that there is no issue of material fact and that it prevails as a matter of law under MCR 2.116(C)(10). In support of its motion, Respondents submitted the following exhibits.

1. February 11, 2020 State Tax Commission Policy Statement (policy statement)
2. December 1, 2020 Darcy Marusich memo (Marusich memo)
3. Affidavit of Darcy Marusich
4. State Assessed 2021 Tax Bill
5. Letter to Indurante & Associates, Inc., dated July 12, 2021
6. Court of Claims Opinion and Order, dated November 8, 2021
7. Court of Appeals Opinion, dated December 1, 2022
8. Michigan Supreme Court Order, dated May 31, 2023

Respondents make three arguments. First, Petitioner admitted that it failed to timely and properly request the credit by filing its APR electronically.<sup>5</sup> Respondents rely on MCL 207.13a(3) in asserting that "[t]o apply for a maintenance credit, a company must submit 'an application in the form prescribed by' the STC."<sup>6</sup> In this case, the STC, "has provided that applications for credits are filed 'in connection with the Annual

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<sup>2</sup> Respondents' Brief, at 5.

<sup>3</sup> See *Transamerica Ins Group v Michigan Catastrophic Claims Ass'n*, 202 Mich App 514, 516; 509 NW2d 540 (1993).

<sup>4</sup> See *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).

<sup>5</sup> Respondents' Brief, at 6.

<sup>6</sup> *Id.* at 6.

Property Report, Forms 1027, 1028, and 1029.”<sup>7</sup> Respondents cite MCL 207.6 to support that “[t]he STC has authority to set forth the form on which the Annual Property Report must be submitted.”<sup>8</sup> Second, Petitioner did not use STC’s form 1027 when submitting its Annual Property Report (APR) and credit application. Third, mailing the APR and credit application in prior years does not entitle Petitioner to the credit via a mail application in 2021.<sup>9</sup>

### **PETITIONER’S RESPONSE AND CROSS-MOTION UNDER MCR 2.116(C)(10)**

Petitioner owns railcars bearing railroad marks and is in the business of leasing the marks on railcars.<sup>10</sup> Petitioner contends that it timely applied for the tax credit, on the prescribed paper form, under MCL 207.13a (Section 13a credit) of the Public Utility Tax Act (“PUTA”). Respondents improperly denied Petitioner’s APR and credit application. Petitioner asserts it is allowed a credit because it (a) is an “eligible company,” (b) incurred such expenses exceeding the amount of its tax bill, (c) and timely applied for the credit in the form prescribed. Therefore, the Tribunal should enter an order reversing Respondents’ decision denying the credit and refunding the \$172,249.72 of public utility tax Petitioner paid under protest.

Further, Petitioner argues that there is no issue of material fact and that it is entitled to judgment as a matter of law under MCR 2.116(C)(10). In support of its responses and own motion, Petitioner submitted the following documents.

- A. Contract between the State of Michigan and BS&A Software
- B. July 24, 2023 Email
- C. *Wells Fargo Bank v Walsh*, unpublished opinion of the Court of Appeals, issue Oct. 29, 2020 (Docket No. 350960)

Petitioner argues several points in its response to Respondents’ (C)(10) motion and in support of its own motion under the same provision. First, even if the APR was required to be filed electronically, the requirements were not stated in Section 13a.<sup>11</sup> Further, Respondents do not identify an e-filing requirement for credit applications under Section 13a.<sup>12</sup> Second, while the credit applications are filed “in connection with” APR, there is no requirement that they be filed online.<sup>13</sup> Third, Respondents cannot contest the propriety of the form used for the credit application because it was printed from the Michigan Department of Treasury’s own website.<sup>14</sup> Last, Petitioner relies on MCL 207.8, which states that the STC has a duty to “inform itself as best it may on the

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 8.

<sup>10</sup> Petitioner’s Brief, at 6.

<sup>11</sup> Petitioner’s Brief, at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 3.

matters necessary to be known, in order to discharge its duties with respect to the assessment of the property of such companies.”<sup>15</sup>

### TRANSACTION SUMMARY

On February 11, 2020, the STC adopted a policy statement entitled, “Applications for Tax Credits for State Assessed Utility Roll” (policy statement).<sup>16</sup> This policy statement provided specific deadlines for amending APRs.

On December 1, 2020, Darcy Marusich, Property Tax Analyst at the Michigan Department of Treasury, issued a memo (Marusich memo) that stated in bold font: “The State Tax Commission has ordered that all 2021 Annual Property Reports submitted by State assessed companies under Public Act 282 of 1905 will be required to be filed using the online electronic filing system.”<sup>17</sup> That memo also contained instructions on how companies will be assigned a personal identification number (PIN) and how to access the online system. Neither party provided a copy of the STC order that is referenced in the memo.

Petitioner’s representative, Indurante and Associates (Indurante), filed a paper copy of Petitioner’s 2021 APR and maintenance credit application on March 17, 2021, by U.S. Postal Service rather than using the electronic system.<sup>18</sup> Indurante used the prescribed forms that it had printed from the Department of Treasury’s website.<sup>19</sup> In the application, Petitioner had stated that they had incurred eligible expenses in the amount of \$349,277.69.<sup>20</sup> The maintenance credit application was in the amount of \$172,249.72.<sup>21</sup> For tax years 2013 to 2020, Petitioner has applied for the maintenance credit via a mail application.<sup>22</sup> Further, for tax years 2013 to 2021, Petitioner has not used the Form 1027 because Petitioner argues that it does not allow for the correct reporting for assets involving railcars with leased marks.<sup>23</sup> The STC has accepted these filings without the Form 1027 in each of these past years.<sup>24</sup>

At some undisclosed time, the STC deemed Petitioner’s 2021 Annual Property Report untimely filed because Petitioner did not use the STC’s electronic filing system. The STC disregarded Petitioner’s paper filing and calculated Petitioner’s 2021 assessment based on the 2021 cost estimation rate applied to the mileage reported by the other railroad companies located in Michigan.<sup>25</sup>

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<sup>15</sup> MCL 207.8.

<sup>16</sup> Respondents’ Brief, Exhibit 1.

<sup>17</sup> Respondents’ Brief, Exhibit 2.

<sup>18</sup> Respondents’ Brief, Exhibit 3, Affidavit of Darcy Marusich, at 2.

<sup>19</sup> Petitioner’s Brief, at 7-9.

<sup>20</sup> *Id.* at 9.

<sup>21</sup> Petitioner’s Brief, at 10.

<sup>22</sup> Petitioner’s Brief, at 6.

<sup>23</sup> *Id.* at 11.

<sup>24</sup> *Id.*

<sup>25</sup> Respondents’ Brief, Exhibit 3, Affidavit of Darcy Marusich, at 2.

On May 10, 2021, the STC sent Petitioner the 2021 tentative values, which amounted to a taxable value (TV) of \$3,204,050 and a state equalized value (SEV) of \$3,204,050.<sup>26</sup> Applying a millage rate of 53.7600, Petitioner was assessed a tax of \$172,249.72.<sup>27</sup> The STC did not provide any information about the maintenance credit at that time – which was not unusual.<sup>28</sup> At that time, Petitioner had no reason to believe that there was a problem with their APR or Section 13a maintenance credit.<sup>29</sup>

On June 29, 2021, Indurante inquired about Petitioner's maintenance credit application to determine why it was not applied to Petitioner's tax bill.<sup>30</sup> In correspondence dated July 12, 2021, a Treasury analyst informed Petitioner that the application they had mailed was not considered timely.<sup>31</sup> Further, Petitioner could only amend their application by July 31, 2021, if their application had been filed timely.<sup>32</sup> The correspondence stated: "The company's submission was not made via Form 1027 as required and cannot be considered a timely filing. Thus, according to the State Tax Commission policy, the request to amend the credit amount applied to the 2021 tax bill for Wells Fargo Rail Corporation, parcel 97-00-00-00-000-162, cannot be considered by Treasury staff."<sup>33</sup>

### STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.<sup>34</sup> In this case, Respondents move for summary disposition under MCR 2.116(C)(8) and Respondents and Petitioner move for summary disposition under MCR 2.116(C)(10).

Motions under MCR 2.116(C)(8) are appropriate when "[t]he opposing party has failed to state a claim on which relief can be granted." The Court of Appeals has held that:

A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. Under this subrule "[a]ll well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." When reviewing such a motion, a court must base its decision on the pleadings alone. In a contract-based action, however, the contract attached to the pleading is considered part of the

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<sup>26</sup> Petitioner's Brief, at 10; Respondents' Brief, Exhibit 4.

<sup>27</sup> Respondents' Brief, Exhibit 4.

<sup>28</sup> *Id.*

<sup>29</sup> Petitioner's Brief, at 10.

<sup>30</sup> Petitioner's Brief, at 10.

<sup>31</sup> Respondents' Brief, Exhibit 5.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See TTR 215.

pleading. Summary disposition is appropriate under MCR 2.116(C)(8) “if no factual development could possibly justify recovery.”<sup>35</sup>

MCR 2.116(C)(10) provides for summary disposition when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.”<sup>36</sup> The Michigan Supreme Court, in *Quinto v Cross and Peters Co.*,<sup>37</sup> provided the following explanation of MCR 2.116(C)(10):

MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.

First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.

In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.<sup>38</sup>

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<sup>35</sup> *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2 633 (2003) (citations omitted).

<sup>36</sup> *Id.*

<sup>37</sup> *Quinto v Cross and Peters Co.*, 451 Mich 358; 547 NW2d 314 (1996) (citations omitted).

<sup>38</sup> *Id.* at 361-363 (Citations omitted).

“A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.”<sup>39</sup> In evaluating whether a factual dispute exists to warrant trial, “the court is not permitted to assess credibility or to determine facts on a motion for summary judgment.”<sup>40</sup> “Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial.”<sup>41</sup>

## CONCLUSIONS OF LAW

PUTA requires railroad company taxpayers to annually file certain information and documents with the STC. Sections 6 and 8 of PUTA require railroad companies to file an APR. Further, Section 13a of PUTA allows for railroad companies to claim a credit that is “equal to the amount of eligible expenses incurred during the calendar year immediately preceding the tax year for which the credit under this subsection is claimed.”<sup>42</sup> Applications for this credit are made in connection with filing an APR, Forms 1027, 1028, and 1029, with the STC.<sup>43</sup> The issue in dispute is whether the STC has the authority to disregard a taxpayer’s APR and maintenance credit application when a taxpayer files them by postal mail rather than by the electronic filing system.

### A. Respondents’ Motion under MCR 2.116(C)(8)

While Respondents properly cited the standard of review for a motion under MCR 2.116(C)(8), their brief does not discuss or reference Petitioner’s pleadings with any particularity as to how they are “so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery.”<sup>44</sup> A party may not support a motion under subrule (C)(8) with documentary evidence such as affidavits, depositions, or admissions.<sup>45</sup> Therefore, the Tribunal only disregards Respondents’ exhibits for the purposes of considering its motion under MCR 2.116(C)(8). However, as stated by our Supreme Court, “[i]t is not sufficient for a party ‘simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to either sustain or reject this position.’”<sup>46</sup>

Petitioner’s response to Respondents’ (C)(8) motion did not refer to its own pleadings in terms of sufficiency, but rather focused on interpretation and application of several PUTA provisions for which it argues it is entitled to relief. Petitioner incorporated

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<sup>39</sup> *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

<sup>40</sup> *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 153 (1994).

<sup>41</sup> *Id.*

<sup>42</sup> *MCL 207.13a*.

<sup>43</sup> *Respondents’ Brief*, at 6.

<sup>44</sup> *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998).

<sup>45</sup> *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994).

<sup>46</sup> *Innovation Ventures v Liquid Manufacturing*, 449 Mich 491, 518-519; 885 NW2d 861 (2016).

the factual allegations of its Amended Complaint to the Michigan Court of Claims into its petition to the Tribunal. Attached to Petitioner's Tribunal petition were the following exhibits:

1. Exhibit A – First Amended Verified Complaint and its attached exhibits:
  - a. Exhibit 1 - Uncontested Annual Property Report
  - b. Exhibit 2 - May 10, 2021 STC correspondence to Wells Fargo's Agent
  - c. Exhibit 3 – Property value calculations contained that reflect the PUTA tax liability of \$172,249.72
  - d. A copy of the 2021 Tax Bill is attached as Exhibit 4.
  - e. Exhibit 6 -- Wells Fargo's July 28, 2021 letter with protest payment
  - f. Exhibit 5 -- A copy of Marusich's July 12, 2021, letter
2. Exhibit B – Copy of *Wells Fargo Rail Corp v Dep't of Treasury*, 344 Mich App 351; 1 NW3d 373 (2022).
3. Exhibit C- Copy of *Wells Fargo Rail Corp v Dep't of Treasury*, 511 Mich 972; 990 NW2d 355 (Mem) (2023) (denying certiorari).

Petitioner alleged that the process it used to claim the maintenance credit for tax year 2021 entitled it to a refund. Petitioner alleges that the Respondents denied Petitioner's maintenance credit because Petitioner's submission was not made via Form 1027 and was not timely.<sup>47</sup> Further, Petitioner alleges that Respondents refused Petitioner the opportunity to amend its filings.<sup>48</sup>

The parties have demonstrated in their respective motions that there is significant disagreement on the interpretation and application of several PUTA provisions, namely Sections 6, 8, and 13a. Resolution of this case requires interpretation of these sections in the context of the parties' actions surrounding Petitioner's APR and tax credit application. Last, the parties dispute whether the STC has the power to mandate the use of an electronic filing system and the consequences for failing to use that system. Testing the legal sufficiency of the petition, accepting all well-pleaded factual allegations as true and construed in a light most favorable to the nonmovant Petitioner, the Tribunal finds that Petitioner has submitted a well-pleaded petition on which the interpretation of PUTA in the context of Respondents' actions may provide relief for Petitioner. Therefore, Respondents' motion for summary disposition under MCR 2.116(C)(8) is denied.

#### **B. Respondents' and Petitioner's Cross-Motions under MCR 2.116(C)(10)**

This case revolves around the propriety of the 2020 STC policy statement and issuance of an order that is only referenced by the Marusich memo. That memo had the subject of "2021 PIN Request for State Assessed Annual Property Reporting

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<sup>47</sup> Petitioner's Court of Appeals Petition, paragraph 15.

<sup>48</sup> Petitioner's Court of Appeals Petition, paragraph 17.

System.”<sup>49</sup> The memo did not contain a copy of the STC’s Order, nor has a copy of the order been submitted by the parties. Both parties rely on a plain language analysis of the applicable statute. Sections 6 and 8 of the PUTA, which address when and how to file an APR, will be addressed first. Sections 13a, which address applications for the tax credit, will be addressed second.

#### A. The Annual Property Report

Sections 6 and 8 establish several provisions including the APR filing deadlines, the use of “blanks,” penalties for failure to file the APR, and the STC’s duties if the taxpayer fails to furnish any information. Section 6 provides details on when to file APRs and what they should contain. The challenge of interpreting Section 6 is that it is only one sentence of 175 words. The first 78 address with when to file and APR and the latter 97 words concern what to file and STC duties.

APRs are due based on a company’s gross annual receipts. In this case, Petitioner’s deadline for filing its APR was between January 1 and March 31 because its gross receipts exceeded \$1,000,000. Respondents argue that Petitioner’s APR was untimely because it did not use Form 1027, which was required to be filed with the electronic filing system. Petitioner argues that the APR and credit application were timely because they were submitted via mail by March 17, 2021. Respondent admits that the paper application was submitted in March 2021.<sup>50</sup>

The controversial language in the latter part of Section 6 states that an entity subject to assessment shall:

make and file with the state board of assessors an annual report, in such form as said board may provide, upon blanks to be furnished by said board setting forth specifically upon blanks so furnished by the board the information prescribed by said board to enable them to make the assessment required in this act.

A plain reading of the first clause, “make and file with the state board of assessors an annual report,” is an instruction to the taxpayer that they will have to draft an annual report and file it with the STC. The next clause is more problematic, “in such form as said board may provide, upon blanks to be furnished by the board...” Respondent argues that the “in such form” refers to how to submit the APR, essentially arguing that “form” is a verb. Whereas Petitioner points to the forms that they downloaded from the state’s website, essentially arguing that form is a noun. “In every case requiring statutory interpretation, we seek to discern the ordinary meaning of the language in the context of the statute as a whole.”<sup>51</sup> We may consult a dictionary to assist in determining the ordinary meaning of relevant words.<sup>52</sup> This case is like *Ford Motor Co.*

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<sup>49</sup> Respondents’ Brief, Exhibit 2.

<sup>50</sup> Respondents’ Brief, Exhibit 3, at paragraph 8.

<sup>51</sup> *TOMRA of N Am, Inc v Dep’t of Treasury*, 505 Mich 333, 339; 952 NW2d 384, 387 (2020).

<sup>52</sup> *Klooster v City of Charlevoix*, 488 Mich 289, 304; 795 NW2d 578 (2011).

*v Treasury* where our Supreme Court had to determine the meaning of “petition” or “claim” for a refund.<sup>53</sup> The Court evaluated the definition based on the part of speech, which in that case, “petition” and “claim” were used as verbs.<sup>54</sup> In this case, the phrase “in such form,” the word “form” is preceded and qualified by an adjective “such.” Verbs are not qualified by an adjective, therefore, form as it is used here is a noun. As a noun, “form,” the dictionary has numerous definitions:

- 3a. established method of expression or proceeding.
4. a printed or typed document with blank spaces for insertion of required or requested information
- 5a. manner or conduct as tested by a prescribed or accepted standard<sup>55</sup>

Further, the rest of the sentence is completely focused on what the annual report must contain. First, the statute does not define “blanks,” which it refers to numerous times. “upon blanks to be furnished by said board....” In this case, “blanks” is the plural form of “blank” and is used as a noun since it is an object that the statute requires the STC to furnish and the taxpayer is required to use to draft their APR. As a noun, the dictionary defines “blank” as “a paper with spaces for the entry of data.”<sup>56</sup> This is a reasonable definition since Section 6 was last amended in 1956 and Section 8 was last amended in 1948 – a period when commercial use of computers was likely in its infancy. Second, that they are “setting forth specifically upon blanks so furnished by the board,” is stating that something specific must be put in those blanks. Third, what is to be set forth specifically is “information prescribed by said board to enable them to make the assessment required in this act.” The later clauses of the sentence focus on what information should be placed on blanks so that the STC can make assessments. The statute empowers the STC to prescribe what information should be reported and what form it should take. Section 8, provides a corroborating statement: “Blanks for making the statements provided for in section 6 and 7 shall be furnished to such companies on making application to said board...” However, a plain reading of the statute does not empower Respondent to prescribe the method of filing the APR.

In this case, Petitioner did not refuse to make the report, but rather submitted it via mail rather than electronically. Petitioner provided its application using STC forms (satisfying taxpayer’s obligations under Section 6 and 8) that it downloaded from the state’s website (which satisfies the STC’s obligation to provide the forms under the statute). With that said, Respondent argues that Petitioner did not use its prescribed Form 1027, whereas Petitioner responds that Form 1027 was inadequate to provide all the information Respondent would have needed to enable them to make the assessment.

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<sup>53</sup> *Ford Motor Co v Treasury*, 496 Mich 382, 391-392; 852 NW2d 786,

<sup>54</sup> *Id.*

<sup>55</sup> *Merriam-Webster’s Collegiate Dictionary* (11<sup>th</sup> ed).

<sup>56</sup> *Id.*

An important issue of this case is the appropriate consequences to Petitioner for not abiding by the statute and by extension, the STC's order. In this case, the STC penalized Petitioner by not accepting or otherwise disregarding Petitioner's APR and denying its tax credit application. However, Section 8 provides three options for dealing with information problems.

There are several tax statutes that specifically prescribe when a filing must be made electronically,<sup>57</sup> by mail<sup>58</sup> or certified mail.<sup>59</sup> Other statutes empower an agency to prescribe the manner rather than state it explicitly.<sup>60</sup> It is clear from these examples that when the legislature intends to require a particular filing method, it will speak. However, Sections 6 and 8 are silent on the method of filing the blanks, nor does it contain express language to allow the STC to prescribe the method. This may have been because the likely viable methods of submission, at the time these statutes were written, were limited to mail or personal delivery.<sup>61</sup> The Tribunal finds that there is no express language in Sections 6 or 8 that empower the STC to prescribe the manner of filing the APR. Further, the Tribunal finds that the statute does not bar Petitioner from submitting the APR via mail.

First, Section 8, establishes a duty on the STC to inform itself.

In case any company fails or refuses to make the statement required by this act, or refuses to furnish any information requested, the board shall inform itself as best it may on the matters necessary to be known, in order to discharge its duties with respect to the assessment of the property of such companies.

The information that the STC has a duty to inform itself on are: (1) on the matters necessary to be known to discharge its duties and (2) with respect to the *assessment* of the property of such companies. Further, read as a whole, this section focuses on the APR and the tax assessment, with no language referring to the tax credit applications.

Second, Section 8 provides for a daily penalty, stating:

Any company which shall refuse or neglect to make the report required by this act or any part thereof, *within the time specified*, shall be subject to a penalty of 500 dollars *for each day of the continuance of such neglect or refusal to file said report...*<sup>62</sup>

The express language provides for a daily penalty if the report is not made "within the time specified." This, a clear legislative intent for the taxpayer to file the APR, even if

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<sup>57</sup> See, for example, MCL 206.312 or MCL 206.711(2).

<sup>58</sup> See, for example, MCL 205.735(3).

<sup>59</sup> See, for example, MCL 205.735(6).

<sup>60</sup> See, for example, MCL 207.13(2).

<sup>61</sup> The fax machine was not invented until 1964.

<sup>62</sup> MCL 207.8 (emphasis added).

they miss the deadline. Also, it does not mention a penalty based on failing to use a method of filing.

Third, when “any company shall show to the satisfaction of said board that it cannot furnish any of the information requested, said board may excuse said company from furnishing such information.” This is obviously discretionary, and there is no evidence that the STC provided such a waiver, but it rounds out the options available to the STC when a company fails to submit the information. The statute does not empower the STC to reject or disregard an APR. Nor does the statute allow the STC to penalize the taxpayer based on the manner of submission – which in this case the STC defined as an electronic filing.

The STC’s policy statement contained instructions on how to submit an APR and applications for the maintenance credit.<sup>63</sup> The policy statement states: “Filing deadlines for all state assessed annual reports and applicable credits are established by statute.”<sup>64</sup> This is an apparent reference to the March deadlines. The policy statement then established three deadlines for amending a current year APR that are not established by the statute. The STC stated that it would accept amendments to an APR to address tax credits if it was received by May 31.<sup>65</sup> It would consider requests to amend the APR if received by July 31.<sup>66</sup> After July 31, the STC would not consider or accept a request to amend an APR to include previously unclaimed credits.<sup>67</sup> Respondents cite no statutory authority to establish these deadlines. The policy statement is silent on the consequences for late-filed APRs, and it is silent on the consequences for APRs that are not filed online. The policy statement only refers to “timely filed” and makes no reference to “manner filed” or its equivalent.

Petitioner realized that the STC did not consider their paper APR and credit application when they received their tax bill. They attempted to “amend” the APR (based on the policy statement); however, that was rejected because the original APR and application were not considered timely filed. A July 12, 2021 letter from Darcy Marusich to Indurante stated:

The company’s submission was not made via Form 1027 as required and cannot be considered a timely filing. Thus, according to the State Tax Commission policy, the request to amend the credit amount applied to the 2021 tax bill for Wells Fargo Rail Corporation, parcel 97-00-00-00-000-162, cannot be considered by Treasury staff.<sup>68</sup>

The failure to use a particular form and timeliness are separate concepts. If the request was not timely because they used the wrong form, that would necessarily mean that the

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<sup>63</sup> Respondents’ Brief, Exhibit 1.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Respondents’ Brief, Exhibit 5.

STC rejected or otherwise disregarded the paper filing. Since the STC did not consider Petitioner's APR properly before it, the subsequent filing would not have been an amended filing, but rather an original filing. Therefore, the amendment deadlines – albeit having questionable legitimacy – were not a factor in this case. However, this creates a problematic issue of due process for two reasons. First, when the STC does not communicate to Petitioner that it has rejected its filing, Petitioner will not discover the problem until it is too late to cure it. Second, even if Petitioner received a rejection, Respondent has foreclosed any cure because any correction is premised on a timely filing in the first place.

The STC's quiet rejection of the APR as "untimely" does not comport with the explicit provisions of Section 6 (specific deadline of March 31) read in concert with Section 8 (daily penalty for late filed reports after the deadline). The daily penalty demonstrates the legislature's intent for the taxpayer to file the APR – and the STC to accept that APR – even if the taxpayer misses the deadline or misfiles it. The STC's policy statement, as applied, effectively denies the taxpayer the right to file an APR if it is late. The policy statement also fails to reasonably inform Petitioner of the significant consequences of missing the deadlines or failing to use the electronic filing system – implicating Petitioner's due process rights.

Last, the STC deemed Petitioner's filing to be a legitimate failure or refusal to furnish information, therefore Section 8 dictates that the STC has a duty to inform itself if the taxpayer fails or refuses to furnish the information.

In case any company fails or refuses to make the statement required *by this act*, or refuses to furnish any information requested, *the board shall inform itself as best it may on the matters necessary to be known*, in order to discharge its duties with respect to the assessment of the property of such companies....<sup>69</sup>

The express language refers to "the statement required by this act" rather than section or subsection. Therefore, the STC's duty to inform itself applies to information contained in the APR and applications for the tax credit. While Petitioner failed to transmit the APR in a manner dictated by the STC, Petitioner furnished the information on STC forms via U.S. Mail. There is no evidence that this information was not available to the STC at the time of their assessment. Darcy Marusich, Property Analyst for the Michigan Department of Treasury, states in their affidavit, "I did not use the information attached as Exhibit 1 to the Petition to calculate the assessment of Wells Fargo's property in 2021."<sup>70</sup> Instead, they used "the 2021 cost estimation rate applied to the mileage reported by the other railroad companies located in Michigan to calculate Wells Fargo's 2021 assessment."<sup>71</sup> "I did not use the information" is different from "I did not have access to the information" and demonstrates an intent to disregard or reject

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<sup>69</sup> MCL 207.8 (emphasis added).

<sup>70</sup> Respondents' Brief, Exhibit 3, at 2.

<sup>71</sup> *Id.*

the information. Although not in the form prescribed, the best information the STC had to inform itself was the paper documents of STC forms (blanks) provided by Petitioner. Last, the statute does not grant the STC the power or discretion to ignore information that it has in its possession merely because it was not transmitted in the manner the STC. The Tribunal finds that by not using Petitioner's paper documents to inform itself "as best it may," the STC violated its duty under MCL 207.8. However, in the end, Petitioner admits that the assessment was correct.

### *B. The Maintenance Credit Application*

The parties disagree on whether the STC may prescribe the manner for submitting a tax credit application. PUTA has a few tax credits that a taxpayer may apply for – namely under Sections 13, 13a, and 13b. Petitioner applied for a tax credit under Section 13a (Section 13a credit), which states: "Subject to subsection (2), an eligible company is allowed a credit against the tax imposed under this act for the tax year equal to the amount of eligible expenses incurred during the calendar year immediately preceding the tax year for which the credit under this subsection is claimed."<sup>72</sup> Subsection 2 limits the credit to "[t]he sum of the credits under subsection (1) and section 13(2) shall not exceed an eligible company's liability for the tax levied under this act in the tax year in which the credit is claimed."<sup>73</sup> In this case, Petitioner had maintenance expenses of \$349,277.69, but subsection 2 would limit that credit to the amount of their tax liability, which was \$172,249.72.<sup>74</sup> The parties do not dispute Petitioner attempted to apply for the Section 13a credit or the amount of the potential credit. Instead, the parties dispute whether the STC may prescribe the manner of filing the application for the credit and whether Petitioner properly applied for the credit. There is also a question of whether the STC exercised that power.

Section 13a(3) states: "[a]n eligible company may apply for the credit under subsection (1) by submitting to the state board of assessors *an application in the form prescribed by the state board of assessors.*"<sup>75</sup> The verb "submitting" is qualified by "to the state board of assessors" and then the noun "application" is qualified by the phrase "in the form prescribed by the state board of assessors." The phrase "in the form" directly relates to the application rather than the verb "submitting." The Tribunal finds that a plain reading of the sentence empowers the STC to prescribe the application form just as in Sections 6 and 8, but it is silent on how the application should be submitted.

However, Respondents have not demonstrated that the STC effectively prescribed the form of credit application. Respondents argue that the Marusich memo dictated using the online system. The dictionary has several definitions of "prescribe" that include:

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<sup>72</sup> MCL 207.13a(1).

<sup>73</sup> MCL 207.13a(2).

<sup>74</sup> Petitioner's Brief, at 9-10.

<sup>75</sup> MCL 207.13a(3) (emphasis added).

(1) To lay down a rule; (1a) To lay down as a guide, direction, or rule of action: ordain; (1b) To specify with authority<sup>76</sup>

Further, “lay down” is defined as “to assert or command dogmatically (lay down the law).”<sup>77</sup> Inherent in these definitions is that the law is commanded or somehow formally communicated or decreed. First, the policy statement is silent about electronic filing. Second, the Marusich memo is ambiguous. The pertinent section was printed as:

**The State Tax Commission has ordered that all 2021 Annual Property Reports submitted by State assessed companies under Public Act 282 of 1905 will be required to be filed using the online electronic filing system.** Each State assessed company will have its own secure, online account which can be accessed with a personal identification number (PIN). This PIN serves as an electronic signature and enables your company to file Annual Property Reports and related credit applications online, view the interactive calculation worksheets as they are produced, and print hard copies of the filing for your records. In addition, all individual tax notices will be posted to the individual online accounts and can be viewed and printed once the tentative and final calculations have been completed.

It states in bold font that the “State Tax Commission has ordered that all 2021 *Annual Property Reports* submitted by State assessed companies under Public Act 282 of 1905 will be required to be filed using the online electronic filing system.”<sup>78</sup> The command in the bolded sentence only refers to the APR. Later in the same paragraph in plain text it states: “This PIN serves as an electronic signature and enables your company to file Annual Property Records *and related credit applications* online....”<sup>79</sup> Without a copy of the STC order, the Tribunal is left with a plain reading of this memo, which could cause a reasonable person to believe that only the APR must be filed online, but the PIN may be used to also submit the related credit application (as a matter of convenience). This interpretation is reasonable given that a plain reading of Sections 6, 8, and 13a, together does not require the APR and maintenance credit application to be filed simultaneously, nor bars them from being filed separately. Nor do Respondents provide any argument or evidence that the APR and related credit applications must be filed together. Last, neither the policy statement, nor the Marusich memo, provide any warning to taxpayers that failing to use the online system will result in a denial or rejection of the APR or the credit applications. The Tribunal finds that the STC did not prescribe that the credit applications must be filed with the electronic filing system. Absent an express prescription, the taxpayer was entitled to file the credit application by mail. Further, having these forms available on the state’s website, as they are required to provide under the statute, creates confusion for taxpayers.

Lastly, neither the policy statement nor the Marusich memo clearly stated when the Section 13a credit application was due. The policy statement merely stated: “Filing deadlines for all state assessed annual reports and applicable credits are established by statute.”<sup>80</sup> The Marusich memo fails to provide fair notice to taxpayers of the filing

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<sup>76</sup> *Merriam-Webster’s Collegiate Dictionary* (11<sup>th</sup> ed).

<sup>77</sup> *Id.*

<sup>78</sup> Emphasis added.

<sup>79</sup> Emphasis added.

<sup>80</sup> Respondents’ Brief, Exhibit 1.

deadline for the credit applications. Section 13a does not state an express deadline or a penalty provision for failing to submit the application in the form prescribed by the STC or in a particular timeframe. Compare Section 13a to the other PUTA tax credit sections. To apply for the Section 13 tax credit, a railroad company is required to file an APR with extra details and information not required by the other credits.<sup>81</sup> The Section 13b(1) tax credit requires a company to apply for it “in a form prescribed by the state board at the time the annual report under section 6 is due.” The application for the Section 13b(5) tax credit must be made before May 1.<sup>82</sup> Therefore, the Tribunal finds that the Section 13a credit application – having no express deadline by statute or STC prescription – was not late when it was filed via mail in March, and not subject to a penalty of denial of the credit under the statute.

Respondents’ final argument, reliance of Section 13a(4), is misguided. “And if Petitioner filed by mail in previous years, the STC had discretion to waive the application requirement in those years. See MCL 207.13a(4). But nothing in that statute states that the STC’s exercise of discretion in previous years entitles a taxpayer to the same discretion in subsequent years.”<sup>83</sup> The STC’s discretion under Section 13a(4) has nothing to do with accepting applications by mail in previous years. Instead, the subsection gives the STC discretion to waive the application altogether if:

for any eligible company the sum of the credits provided in this section and in section 13(2) equals the eligible company's liability for the tax levied under this act before application of the credits, the board may waive the application requirement in subsection (3) and the reports and statements required under sections 6, 7, 8, and 13.<sup>84</sup>

If it had used information that it should have used in fulfilling its duty to best inform itself, Respondents would have determined that the sum of the credits equals Petitioner’s 2021 PUTA tax liability and that it had the discretion to waive the application requirements. This would have eased Respondents’ administrative burdens and prevented the vary issues in this case.

The STC’s strict “apply online only” mandate is contrary to PUTA’s express terms. First, PUTA does not empower the STC to prescribe methods of filing the APR or the 13a tax credit. Second, it contains express penalty language that does not empower STC to reject an APR. Third, it does not empower the STC to reject the 13a credit based on manner of submission. Fourth, it contains dictates that the STC has a duty to inform itself. Fifth, it allows the STC to waive the APR requirements under Section 6 and allows the STC to waive credit applications when it determines that the tax credit equals the tax. The STC has exceeded its statutory authority and abused its discretion by limiting its acceptance of the APR and credit applications to online submissions and setting deadlines beyond the dictates of the statute.

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<sup>81</sup> MCL 207.13(2)-(5).

<sup>82</sup> MCL 207.13(b)(7).

<sup>83</sup> Respondents’ Brief, at 8.

<sup>84</sup> MCL 207.13a(4).

A legal argument that was not addressed by either party is whether the STC's policy statement and/or order have the force of law under the statute and/or the Administrative Procedures Act (APA).<sup>85</sup> "In order for an agency regulation, statement, standard, policy, ruling, or instruction of general applicability to have the force of law, it must fall under the definition of a properly promulgated rule. If it does not, it is merely explanatory."<sup>86</sup> For instance, in *Danse v City of Madison Heights*, the Supreme Court held that "[t]he phrase "as defined by the state tax commission" does not, by itself, allow the State Tax Commission to define "special tools" without complying with the APA."<sup>87</sup> By comparison, the language of Section 13a(3), "submitting to the state board of assessors an application in the form prescribed by the state board of assessors," may also require compliance with the APA. In a recent decision, our Supreme Court succinctly defined a "rule" as:

an agency action is a "rule" under the Michigan APA only if it meets, at minimum,<sup>26</sup> the following elements: (1) it is an agency regulation, statement, standard, policy, ruling, or instruction; (2) it is of general applicability; (3) it implements or applies law enforced or administered by the agency, or it prescribes the organization, procedure, or practice of the agency; and (4) it, in itself, has the force and effect of law.<sup>88</sup>

The policy statement and order appear to satisfy all four factors. However, "if an agency lacks rulemaking power, any statement of general applicability issued by the agency necessarily lacks the force and effect of law, no matter if the agency has issued it following the APA's rulemaking procedures."<sup>89</sup> Further, such statement, "cannot alter rights, impose obligations, or have a present binding effect on regulated entities, the agency, or the courts."<sup>90</sup> Respondents have not provided any authority that it has rule making authority with respect to its PUTA policy statement or order, or addressed whether it properly promulgated these under the APA. However, Petitioner has not questioned Respondents' rule making authority under the APA either. With that said, this case is resolved by a plain language analysis of the statute.

Having reviewed the Motions, the response, and the evidence submitted, the Tribunal finds that denying Respondents' Motion for Summary Disposition under MCR 2.116(C)(8) is warranted. Further, the Tribunal finds that denying Respondents' Motion for Summary under MCR 2.116(C)(10) is warranted. Finally, the Tribunal finds that granting Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is warranted. Petitioner's tax assessment s \$172,249.72 and its application for a Section

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<sup>85</sup> MCL 24.201 *et seq.*

<sup>86</sup> *Danse Corp v City of Madison Heights*, 466 Mich 175; 644 NW2d 721 (2002) citing *Goins v Greenfield Jeep Eagle*, 449 Mich 1, 7-10; 534 NW2d 467 (1995).

<sup>87</sup> *Id.* at 183.

<sup>88</sup> *Michigan Farm Bureau v Dep't of Env't, Great Lakes, & Energy*, \_\_ Mich \_\_; \_\_ NW3d \_\_ (2024) (Docket No. 165166); slip op at 12.

<sup>89</sup> *Id.* citing *Clonlara, Inc v State Bd of Ed*, 442 Mich 230, 243; 501 NW2d 88 (1993).

<sup>90</sup> *Id.* at 21.

13a credit amounted to \$172,249.72, therefore, Petitioner's tax liability after tax credits is \$0 for tax year 2021. Petitioner is entitled to its refund claim.

### **JUDGMENT**

IT IS ORDERED that Respondents' Motion for Summary Disposition under MCR 2.116(C)(8) is DENIED.

IT IS FURTHER ORDERED that Respondents' Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition under MCR 2.116(C)(10) is GRANTED.

IT IS FURTHER ORDERED that Petitioner's refund request is GRANTED.

IT IS FURTHER ORDERED that Respondent Michigan Department of Treasury shall issue the refund required by this Order within 28 days of entry of this Final Opinion and Judgment.

This Final Opinion and Judgment resolves the last pending claim and closes the case.


### **APPEAL RIGHTS**

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty or disabled veterans exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal

by leave.” A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By 

Entered: October 14, 2024

**PROOF OF SERVICE**

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk